

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DR. FREDERICK JOSEPH LANNAK,

Plaintiff,

v.

Civil Action No. 06-180 (JJF)

U.S. SENATOR JOSEPH BIDEN,
U.S. SENATOR THOMAS CARPER,
CONGRESSMAN MICHAEL CASTLE,

Defendants.

**MOTION TO ALLOW ATTORNEYS FROM THE OFFICE OF UNITED
STATES SENATE LEGAL COUNSEL AND FROM THE OFFICE OF
THE GENERAL COUNSEL OF THE UNITED STATES HOUSE OF
REPRESENTATIVES TO APPEAR WITHOUT LOCAL COUNSEL**

Pursuant to 2 U.S.C. § 288f(b) and § 130f(a), the United States respectfully moves this Court for an Order allowing United States Senate Legal Counsel Patricia Mack Bryan, Assistant Senate Legal Counsel Thomas E. Caballero, and Assistant Counsel for the U.S. House of Representatives John D. Filamor to appear before this Court without local counsel. Additionally, the United States requests that Ms. Bryan, Mr. Caballero, and Mr. Filamor be provided with electronic filing passwords so that they can remotely file pleadings with this Court. In support of this motion, the United States provides the following:

1. Section 288f(b) of title 2 of the United States Code provides:

The Counsel, the Deputy Counsel, or any designated Assistant Counsel or counsel specially retained by the Office [of Senate Legal Counsel] shall be entitled, for the purpose of performing his functions under this chapter, to enter an appearance in any proceeding before any court of the United

States or of a State or political subdivision thereof without compliance with any requirement for admission to practice before such court, except that the authorization conferred by this subsection shall not apply with respect to the admission of any such person to practice before the United States Supreme Court.

Under 2 U.S.C. §§ 288b(a), the Senate Legal Counsel "shall defend the Senate or a committee, subcommittee, Member, officer, or employee of the Senate . . . when directed to do so by the adoption of a resolution by the Senate." On May 23, 2006, the Senate adopted Senate Resolution 490, 109th Cong., 2nd Sess., *reprinted in* 152 Cong. Rec. S5029 (daily ed. May 23, 2006), authorizing the Senate Legal Counsel to represent Senators Joseph R. Biden, Jr. and Thomas R. Carper in this case. Accordingly, Senate Legal Counsel Bryan and Assistant Senate Legal Counsel Caballero are appearing in this matter to perform the functions of the Office of Senate Legal Counsel as directed by the Senate.

2. Section 130f(a) of title 2 of the United States Code provides:

The General Counsel of the House of Representatives and any other counsel in the Office of the General Counsel of the House of Representatives, including any counsel specially retained by the Office of General Counsel, shall be entitled, for the purpose of performing the counsel's functions, to enter an appearance in any proceeding before any court of the United States or of any State or political subdivision thereof without compliance with any requirements for admission to practice before such court, except that the authorization conferred by this subsection shall not apply with respect to the admission of any such person to practice before the United States Supreme Court.

The Office of General Counsel of the House of Representatives provides representation to Members of the House of Representatives. *See* Rule II.8, Rules of the U.S. House of Representatives (109th Cong.). Assistant Counsel Filamor is

appearing in this matter to perform the functions of the Office of General Counsel of the House of Representatives.

3. To the extent that Local Rule 83.5 of this Court requires attorneys of the Office of Senate Legal Counsel and of the Office of General Counsel of the House of Representatives to associate with local counsel, that local rule would appear to conflict with the above-referenced statutes. See Fed. R. Civ. P. 83(a)(1) (local rules must be consistent with Acts of Congress). Accordingly, the United States respectfully requests that, in this particular case, the Court waive the local counsel requirement of Local Rule 83.5.

4. In this matter, the Office of Senate Legal Counsel has designated Ms. Bryan as lead attorney and Mr. Caballero to serve as assistant lead attorney in representing Defendant Senators Biden and Carper. The Office of General Counsel of the House of Representatives has designated Mr. Filamor to serve as lead attorney in representing Defendant Representative Castle.

5. Senate Legal Counsel Bryan, Assistant Senate Legal Counsel Caballero, and Assistant Counsel Filamor have already been admitted to this Court *pro hac vice*. As such, they have submitted to the disciplinary jurisdiction of this Court, and have certified that they are generally familiar with this Court's Local Rules. Additionally, as stated in their respective motions for admission *pro hac vice*, Ms. Bryan and Mr. Filamor are active members of the Bar of the District of Columbia, and Mr. Caballero is an active member of the Bar of the State of Florida. Ms. Bryan has served as Senate Legal Counsel for the past seven years and Mr. Caballero has been an Assistant Senate

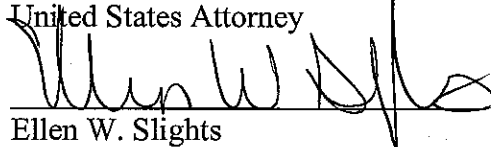
Legal Counsel for almost four years. Mr. Filamor has served as an Assistant Counsel in the House of Representatives for four and a half years. Ms. Bryan and Mr. Caballero have represented the Senate and Members, officers and employees of the Senate in numerous federal District Courts and Courts of Appeals. Mr. Filamor has similarly represented the House of Representatives, Members of the House, and officers and employees of the House in various federal District Courts and Courts of Appeals during his service as Assistant Counsel.

Accordingly, for the reasons set forth above, the United States respectfully requests that Senate Legal Counsel Patricia Mack Bryan, Assistant Senate Legal Counsel Thomas E. Caballero, and Assistant Counsel for the U.S. House of Representatives John D. Filamor be allowed to appear before this Court without local counsel and that they be provided with electronic filing passwords so that they can remotely file pleadings with this Court. A proposed order is attached hereto.

Dated: July 6, 2006

Respectfully submitted,

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Attorneys for U.S. Senators Joseph R.
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Defendants.

ORDER

UPON CONSIDERATION of the United States' motion to allow United States Senate Legal Counsel Patricia Mack Bryan, Assistant Senate Legal Counsel Thomas E. Caballero, and Assistant Counsel for the U.S. House of Representatives John D. Filamor to appear without local counsel, the reasons stated therein, and the entire record herein, it is this ____ day of _____, 2006 hereby

ORDERED that the United States' motion should be and it hereby is granted; and
it is.

FURTHER ORDERED that, for this matter only, Local Rule 83.5(d) is waived, and United States Senate Legal Counsel Patricia Mack Bryan, Assistant Senate Legal Counsel Thomas E. Caballero, and Assistant Counsel John D. Filamor are not required to associate with local counsel nor is the United States Attorney's Office required to sign pleadings nor attend proceedings with them; and it is.

FURTHER ORDERED that the Clerk's Office provide United States Senate Legal Counsel Patricia Mack Bryan, Assistant Senate Legal Counsel Thomas E. Caballero, and Assistant Counsel John D. Filamor with Electronic Filing Log-Ins and Passwords so that they may file pleadings in this Court without the participation of the United States Attorney's Office.

UNITED STATES DISTRICT JUDGE

AFFIDAVIT OF SERVICE

I, Kathie Gray, an employee in the Office of the United States Attorney for the District of Delaware, hereby attest under penalty of perjury that on July 6, 2006, I electronically filed the foregoing **MOTION TO ALLOW ATTORNEYS FROM THE OFFICE OF UNITED STATES SENATE LEGAL COUNSEL AND FROM THE OFFICE OF THE GENERAL COUNSEL OF THE UNITED STATES HOUSE OF REPRESENTATIVES TO APPEAR WITHOUT LOCAL COUNSEL** with the Clerk of the Court using CM/ECF, and I hereby attest that I have delivered a copy of said document via United States Mail, postage prepaid, to Plaintiff at the following address:

Frederick Joseph Lannak, *Pro Se*
126D Chestnut Crossing Drive
Newark, DE 19702

/s/ Kathie Gray

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